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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES-Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION
OF SULPHUR SPRINGS VALLEY
ELECTRIC COOPERATIVE, INC. FOR A
HEARING TO DETERMINE THE FAIR
VALUE OF ITS PROPERTY FOR
RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RETURN
THEREON, TO APPROVE RATES
DESIGNED TO DEVELOP SUCH RETURN
AND FOR RELATED APPROVALS.

DOCKET NO. E-01575A-08-0328

IN THE MATTER OF THE APPLICATION
OF SULPHUR SPRINGS VALLEY
ELECTRIC COOPERATIVE, INC. FOR AN
ORDER INSTITUTING A MORATORIUM
ON NEW CONNECTIONS TO THE V-7
FEEDER LINE SERVING THE
WHETSTONE, RAIN VALLEY, ELGIN,
CANELO, SONOITA, AND PATAGONIA,
ARIZONA AREAS.

DOCKET NO. E-01575A-09-0453

**NOTICE OF FILING CLOSING
BRIEF**

Sulphur Springs Valley Electric Cooperative, Inc., hereby files its Closing Brief for
the March 24 - 26, 2010, A.R.S. § 40-252 Hearing held in the above-captioned matters.

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Arizona Corporation Commission
DOCKETED

APR 15 2010


DOCKETED BY

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1 RESPECTFULLY SUBMITTED this 15th day of April, 2010.

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES—Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
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23 FEEDER LINE SERVING THE
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25 CANELO, SONOITA, AND PATAGONIA,
26 ARIZONA AREAS.

DOCKET NO. E-01575A-09-0453

17 **CLOSING BRIEF OF**
18
19 **SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC.**
20
21 **(A.R.S § 40-252 PROCEEDING)**

22
23 **April 15, 2010**
24
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26

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I. INTRODUCTION.

Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC" or "Cooperative") hereby submits its Closing Brief for the A.R.S. § 40-252 evidentiary hearing held in consolidated Docket Nos. E-01575A-08-0328 and E-01575A-09-0453 on March 24 – March 26, 2010 ("252 Hearing"). Based upon the evidence presented at the 252 Hearing, and for the reasons set forth herein, SSVEC requests that the Arizona Corporation Commission ("Commission") expeditiously issue its Order authorizing the Cooperative to commence construction of the 69 kV subtransmission line ("69 kV line") to serve the Sonoita, Patagonia, Whetstone, Rain Valley, Elgin, and Canelo areas ("Affected Areas") and resume the Sonoita Reliability Project ("Project"). Following the issuance of the Commission's Order granting the relief requested in its *Petition to Amend Decision No. 71274 Pursuant to A.R.S. §40-252 and For Related Authorization* ("252 Petition"), and upon such Order becoming final and non-appealable under Arizona law, SSVEC has agreed to withdraw (within ten business days) its *Application for Rehearing and Reconsideration of the Decision* ("Reconsideration Application") in Docket No. E-01575A-08-0328 and its *Application for a Moratorium* in Docket No. E-01575A-09-0453 ("Moratorium Application"). SSVEC requests that the Commission issue its Order granting the requested relief as expeditiously as possible but no later than the end of May 2010.

II. BACKGROUND AND PROCEDURAL HISTORY.

A. The Decision

On September 8, 2009, the Commission issued Decision No. 71274 in Docket No. E-01575A-08-0328 related to SSVEC's rate case ("Decision") which expressly prohibited SSVEC ("until further Order of the Commission")¹ from constructing the proposed 69 kV line to serve the Affected Areas. SSVEC had previously planned and scheduled principal

¹ Decision at page 48, line 26.

1 construction of the 69 kV line and substation as part of the Project to commence in the
2 Fall of 2009 because the Cooperative's analysis had determined it necessary to alleviate
3 significant power quality, reliability, and capacity constraints resulting in power
4 fluctuations and outages in the Affected Areas that are currently served by the
5 Cooperative's existing 25 kV V-7 Feeder Line ("V-7 Feeder").

6 The Decision further ordered SSVEC to: (i) commission an independent feasibility
7 study regarding alternatives (including use of distributed renewable energy) that could
8 mitigate the need for construction of the 69 kV line (hereinafter referred to as the
9 "Independent Study") and to report the findings of such Independent Study to the
10 Commission by December 31, 2009; (ii) conduct Public Forums in the Affected Areas to
11 include topics relating to the results of the Independent Study and addressing how
12 renewable energy generation (in particular, distributed generation) could be incorporated
13 into the generation plans to serve the area covered by the planned 69 kV line and
14 associated upgrades; and (iii) prepare a report to be filed with the Commission by July 30,
15 2010, that discusses the outcome of the Public Forums ("Public Forum Report").

16 As a consequence of the Commission's Decision to prohibit SSVEC from
17 continuing the Project and constructing the 69 kV line, on September 18, 2009, SSVEC
18 filed the Moratorium Application for the Commission to issue an order authorizing the
19 Cooperative to institute a moratorium on new and/or expanded service connections to its
20 V-7 Feeder so the power quality, reliability, and capacity problems, resulting in power
21 fluctuations and outages (that would continue to exist within the Affected Areas) would
22 not be further exacerbated and to prevent a further degradation of the service to existing
23 members.

24 On September 28, 2009, pursuant to A.R.S. §40-253, SSVEC filed its
25 Reconsideration Application. The Reconsideration Application requested the
26 Commission to reconsider three specific areas of the Decision related to: (i) The

1 Commission prohibiting SSVEC from constructing the 69 kV line; (ii) the authorized
2 revenue requirement; and (iii) the administration of the Cooperative's Wholesale Power
3 and Fuel Adjustor. On October 13, 2009, the Commission voted to grant the
4 Reconsideration Application, which is also currently pending before the Commission in
5 this docket.

6 In compliance with the Decision, on October 30, 2009, SSVEC filed a report
7 regarding the public forums SSVEC intended to conduct in the communities serviced by
8 the planned 69 kV line and associated upgrades. The report states that SSVEC intended to
9 conduct such public forums commencing in early 2010.

10 *B. Commissioning of the Independent Study*

11 Since the Decision ordered SSVEC to commission and file a comprehensive
12 Independent Study in a relatively short period of time, following the issuance of the
13 Decision, SSVEC immediately engaged the services of TRC Companies, Inc. ("TRC") to
14 assist in the preparation and issuance of a Request for Proposal ("RFP"). TRC has
15 extensive experience in utility infrastructure, energy, environmental planning, and
16 engineering. SSVEC also sought and obtained input from the Save the Scenic Sonoita
17 Elgin Grasslands ("3SEG")² group on the Statement of Work³ for the RFP and invited
18 representatives from 3SEG to review the Statement of Work and to provide their input to
19 be included in the RFP for the Independent Study. At the August 17 and 25, 2009, Open
20 Meetings, the Commission specifically requested SSVEC to keep Staff informed as to the
21 process for the commissioning of the Independent Study. Thus, on October 12, 2009,
22 SSVEC met with a representative of Staff to provide: (i) a summary of the process to
23 develop the RFP, including meetings the Cooperative had with 3SEG and the input from
24 3SEG that was included in the RFP, and (ii) a copy of the RFP and the list of potential

25 ² The 3SEG group opposed the 69 kV line and was interested in the exploration of renewable alternatives.

26 ³ The Statement of Work (which the 3SEG group had input) is the most critical component of the RFP as it established how the Independent Study would be accomplished.

1 bidders that was developed with the assistance of TRC and 3SEG. The RFP was issued,
2 and on October 27, 2009, SSVEC received responses from two of the potential 14 bidders.
3 On October 28, 2009, SSVEC again met with representatives from Staff and presented an
4 RFP Summary and the Statement of Work, as well as additional information regarding the
5 RFP and selection process. Based upon the qualifications, independence, and quality of
6 its proposal, Navigant Consulting, Inc (“Navigant”) was selected by SSVEC and approved
7 by Staff and was awarded the bid to conduct the Independent Study.⁴ Pursuant to the
8 Decision, on December 31, 2009, SSVEC filed the Independent Study with the
9 Commission.

10 C. Public Forum Requirement

11 The Decision provides the following two provisions relating to conducting Public
12 Forums in the Affected Areas, which appears to prohibit SSVEC from seeking
13 Commission authorization to commence construction of the 69 kV line that SSVEC
14 believes will result in further delay and additional costs:

15 *We believe a feasibility study prepared on behalf of the Cooperative by an*
16 *independent third party is necessary for further analysis and consideration*
17 *of the issues presented, prior to proceeding with construction of the project.*
18 *Therefore, we will require the Cooperative to docket a feasibility study on*
19 *the project and possible alternatives and hold public forums in the impacted*
20 *communities. The public forums shall include an opportunity for community*
21 *members’ discussion on the feasibility study, including alternatives prior to*
22 *construction of the project. At the conclusion of the public forums the*
23 *Cooperative shall docket a report and minutes of the public forums.*⁵

24 *IT IS FURTHER ORDERED that Sulphur Springs Valley Electric*
25 *Cooperative, Inc. shall not commence construction of the referenced 69kv*
26 *line until the public has had an opportunity to review and comment on the*
*report and until further Order of the Commission.*⁶

27 The Independent Study confirmed that renewable generation is not a practical
28 alternative to the construction of the 69 kV line and provided confirmation that other

29 ⁴ 252 Hearing Exhibit (hereinafter “Hr. Ex.”) A-6 (Exhibit B).

30 ⁵ Decision at page 39, lines 12-19 (emphasis added.)

31 ⁶ *Id.* page 48, lines 24-26 (emphasis added.)

1 alternatives initially considered by SSVEC and/or subsequently proposed by the
2 Intervenor, are not proven or viable solutions to the problems affecting the V-7 Feeder.
3 It further found that immediate action should be taken to affect a solution to the problems.
4 Accordingly, SSVEC believes that in light of such findings, it is not in the public interest
5 for the Commission to further delay SSVEC from constructing the 69 kV line. However,
6 based upon the quoted language from the Decision cited above, the Decision requires
7 SSVEC to: (i) first conduct Public Forums that will address the results of the Independent
8 Study, and (ii) file a report with the Commission before the Commission will authorize
9 SSVEC to proceed with the construction of the line. Therefore, the Decision would have
10 to be amended to remove this prerequisite before the Commission can authorize
11 construction of the 69 kV line (assuming the public forum requirement had not as yet been
12 met).

13 *D. The 252 Petition*

14 In light of the Independent Study's conclusions and recommendations, discussed in
15 more detail below, SSVEC filed its 252 Petition on January 14, 2010. In the 252 Petition,
16 SSVEC seeks an amendment of the Decision pursuant to A.R.S. §40-252 to remove the
17 apparent requirement to conduct public forums and file a report before the Commission
18 would consider granting SSVEC authority to commence construction of the 69 kV line.
19 The 252 Petition also requested the related authorization from the Commission to
20 commence construction of the 69 kV line pursuant to the Decision.⁷ In support of its 252
21 Petition, SSVEC attached the Independent Study and subsequently incorporated an
22 independent poll of the Cooperative's members prepared by Severson & Associates

23 ⁷ As stated in its 252 Petition, by seeking this authorization, SSVEC neither concedes that the Commission
24 had legal authority to prohibit the Cooperative from constructing the 69 kV line when the Commission
25 adopted the Decision, nor does SSVEC waive any of its rights to continue asserting at the Commission, or
26 in a court of competent jurisdiction, that the Commission does not have legal authority to prohibit the
siting and construction of a transmission line less than 115 kV if the requested relief herein is not granted.
See, A.R.S. § 40-361. SSVEC hereby incorporates by reference Section IV of its Reconsideration
Application relating to the 69 kV line.

1 (“Independent Poll”) which found that SSVEC’s members, including those members
2 residing in the Affected Areas, overwhelmingly desired construction of the 69 kV line.

3 At a Special Open Meeting of the Commission (Staff Meeting) held on February 3,
4 2010, the Commission considered the Cooperative’s 252 Petition. Prior to going into
5 Executive Session, the Commission’s Chief Counsel briefly summarized the issues raised
6 by the Cooperative in its 252 Petition including: (i) the exigent reliability circumstances,
7 and (ii) the potential loss of American Relief and Recovery Act (“ARRA”) and Clean
8 Renewable Energy Bond (“CREB”) money if the Commission did not expeditiously grant
9 the relief requested in the 252 Petition. Following the Executive Session, the Commission
10 adopted the following Motion:

11 *... grant Sulphur Springs Valley Electric Cooperative’s Petition to Amend*
12 *Decision No. 71274 pursuant to A.R.S. §40-252 and for related*
13 *authorization for the purposes of further consideration of whether Decision*
14 *No. 71274 should be amended and the request for related authorization*
15 *should be approved; and also grant the Cooperative’s request for expedited*
consideration of its Petition and direct the Hearing Division to conduct
appropriate proceedings and prepare a recommended opinion and order for
Commission consideration on an expedited basis. (Emphasis added.)

16 By Procedural Order dated February 11, 2010, the evidentiary hearing on the 252
17 Petition was scheduled to commence on March 24, 2010. In addition to the Cooperative
18 and Staff, intervention was granted to the following individuals: Susan J Downing, Susan
19 Scott, and James F. Rowley, III (collectively referred to herein as the “Intervenors”). The
20 parties to the proceeding were also ordered to file pre-filed direct testimonies, and SSVEC
21 was required to provide public notice of the hearing.

22 *E. The Public Forum Report*

23 As the Decision required SSVEC to conduct Public Forums in the Affected Areas
24 and file its Public Forum Report by July 30, 2010, per its initial public forum compliance
25 filed on October 30, 2009, SSVEC scheduled and noticed its Public Forums for the
26

Affected Areas for March 9 and March 11, 2010, in Patagonia and Sonoita, respectively.⁸ Such Public Forums were held on those days and moderated by an Independent Moderator (Judy Gignac) as required by the Administrative Law Judge's ("ALJ") Procedural Order dated January 29, 2010.⁹ On March 24, 2010, SSVEC filed its Public Forum Report for the Affected Areas in compliance with the Decision.¹⁰

III. THE COOPERATIVE HAS FULLY COMPLIED WITH THE DECISION AND THE COMMISSION SHOULD AUTHORIZE SSVEC TO RESUME THE PROJECT AND COMMENCE CONSTRUCTION OF THE PROPOSED 69 KV LINE.

A. The Independent Study

1. The Independent Study and other Evidence Presented at the 252 Hearing Clearly Demonstrated that the Most Viable Option is the Proposed 69 kV Line.

After reviewing all potential options to alleviate the capacity and reliability problems in the Affected Areas, including alternative routes and the use of renewable resources, the Independent Study is unequivocal in its findings and conclusions. After reviewing all of the alternatives, the Independent Study concluded that:

The preferred alternative based on feeder performance and firm capacity requirements is the construction of the new 69kV line along the Ranch

⁸ Pursuant to the Procedural Order dated March 8, 2010, the Administrative Law Judge rejected the Intervenor's objections and assertions that the Public Forums to be held were not in compliance with the Decision and found that "the public forums should be permitted to proceed as proposed." (Page 3, lines 1-2.) This followed a response to the Intervenor's objections filed by Staff on March 3, 2010, that stated Staff's belief that "SSVEC's report on the planned conduct of the public forums complies with the requirements of Decision No. 71274." (Page 3, lines 12-13.)

⁹ The ALJ's March 8, 2010, Procedural order provided that "[i]f the Intervenor has proposals they wish to discuss at the public forums, SSVEC has offered to include them on the agenda. In any case, however, the Intervenor can participate, and express their opinions and plans in the public forums as any member of the public should be able to." (Page 2, lines 16-16.) Notwithstanding, none of the Intervenor chose to participate at the Public Forums.

¹⁰ As discussed in more detail below, since SSVEC has now complied with the requirement to conduct Public Forums in the Affected Areas and filed its Public Forum Report prior to July 30, 2010, the need for the Commission to amend the Decision to allow commencement of construction of the 69 kV line prior to completion of the Public Forums is now moot.

where SSVEC has easement rights.¹¹

Despite the written and oral claims asserted by the Intervenors regarding the visual impacts of the proposed 69 kV line to the contrary, the Independent Study confirmed SSVEC's original analysis that the proposed 69 kV route along existing easements was the option that had the least visual impact. The Independent Study found that:

*...the T-1 route has the least visual constraints due to its relatively lower exposure to residential and roadway views. In addition, most of this route variation follows existing distribution lines which would tend to decrease the degree of noticeable visual change.*¹²

The Independent Study also looked at renewable options, including the use of distributed generation options. The Independent Study confirmed SSVEC's original conclusion regarding renewable generation and found that:

*Most renewable energy options, including wind and solar photovoltaic, did not provide sufficient coincident peak load reduction to be feasible – the feeder peak occurs during cold winter mornings when the sun is low on the horizon.*¹³

Regarding the Intervenors' claim that renewable generation, other distributed generation options, and demand side management should be vigorously pursued to resolve the reliability and capacity problem in the Affected Areas, and thereby negate the need to construct the 69 kV line, Mr. Eugene Shlatz of Navigant testified:

I disagreed that it should be pursued to provide firm capacity on the V-7 feeder. The reason why is it does not provide firm capacity, what I see as a serious flaw, is the complete absence of any analysis founded on fundamental engineering principle. Common utility analyses and practices for evaluating these kinds of options that would demonstrate that indeed these options provided firm capability, reliable capability that the company rely on to serve its loads reliably, there was complete absence of that type of

¹¹ Hr. Ex. A-2, Exhibit B at page 5.

¹² *Id.* at page 72 (emphasis added.) The referenced T-1 route is the route that SSVEC has chosen for the proposed 69 kV line.

¹³ *Id.* at page 5 (emphasis added.)

analysis.¹⁴

Finally, when asked by the ALJ as to whether Staff believed that the Cooperative complied with the Decision with respect to the Independent Study, Mr. Abinah, on behalf of Staff, testified, "Yes, Your Honor."¹⁵

2. The Independent Feasibility Study Corroborates the Cooperative's Analysis Regarding the Need for Immediate Commencement of Construction of the 69 kV line.

The Independent Study affirms SSVEC's position of urgency and need for a moratorium on new hook-ups if there is going to be further delay and finds:

*The results of NCI's investigation indicates SSVEC should take immediate action to address current performance issues and capacity limits, including carefully assessing the impact of customer requests for new or expanded service on V-7 feeder performance and capacity.*¹⁶

Although at the 252 Hearing, the Intervenors, including Mr. Marshall Magruder, a witness at the 252 Hearing on behalf of the Intervenors, took the position that taking immediate action to address current performance issues does not constitute an emergency, Mr. Shlatz testified and rejected those positions and stated the following:

When we say in our report there is an immediate problem, one, that should be taken to mean there is a problem. And whether the use of the word emergency, I would deem that to be may not be emergency in that the line is on the ground, but it certainly could be construed as an emergency in that there is an immediate problem that should be taken care of and it should not wait.

*I just talked about the performance problems, the reliability problems, power quality, power surges, voltage variability, perturbations, limited capacity. All those taken together suggest a very severe problem. And it would not be taken out of context to suggest that those are near emergency conditions. So I disagree with that perspective.*¹⁷

¹⁴ Transcript of March 24-26, 2009, 252 Hearing (hereinafter "Hr. Tr.") at page 198, line 24 through page 199, line 9.

¹⁵ Hr. Tr. at page 803, lines 19-24.

¹⁶ Hr. Ex. A-2, Exhibit B at page 3 (emphasis added.)

¹⁷ Hr. Tr. at page 203, line 19 through page 204, line 9.

3. The Evidence Supports the Commission's Concerns and the Independent Study's Conclusions and Recommendations

The Independent Study supports concerns of several of the Commissioners raised at the August 17, 2009, Special Open Meeting at which the Commissioners considered whether to adopt an amendment to the Recommended Opinion and Order, to require the Independent Study. At such Open Meeting, Commissioner Newman stated:

*I really truly believe that there should be an independent third party looking at the kv line.*¹⁸

This has now been done. The Commission afforded those members of the public which opposed the 69 kV line the assurance they sought with the commissioning and filing of the Independent Study that was conducted before any construction commenced.

Commissioner Pierce stated at this Special Open Meeting:

*So what I am concerned about is, let's say that a third party is hired and that third party comes back and says, you know, the company is right, at what point can the company then go on as they normally would, if that were to happen?*¹⁹

The Independent Study has since confirmed that the Cooperative was right and, therefore, should not be further delayed in moving forward with the construction of the 69 kV line.

In voting for the amendment ordering the Independent Study and prohibiting construction of the 69 kV line, Chairman Mayes stated:

*And I wanted to make sure that this study is done within the time frame allotted and that the Commission can come back and look at this issue a year from now and determine whether or not this line needs to be built.*²⁰

Commissioner Stump, stated:

*...every community in Arizona deserves reliable power, including rural Arizona. And they deserve it without delay.*²¹

¹⁸ Transcript of August 17, 2009, Special Open Meeting at page 140, lines 16-18.

¹⁹ *Id.* at page 144, lines 14-18.

²⁰ *Id.* at page 184, lines 11-15.

²¹ Transcript of August 25, 2009, Open Meeting at page 336, lines 5-7.

1 The Independent Study did, in fact, confirm the evidence presented at the original rate
2 case hearing for the need for the 69 kV line to restore reliable power to the Affected
3 Areas. It further corroborated the need for immediate action to resolve the poor
4 performance and capacity issues in the Affected Areas. Continued delay in granting
5 SSVEC authority to commence construction of the 69 kV line, will only increase the risk
6 of outages and unreliable service, as well as increase costs to SSVEC members; neither of
7 which are in the public interest.

8 Finally, Chairman Mayes referenced the issue of the 69 kV line in voting for the
9 Decision by stating:

10 *I share Commissioner Stump's concerns about the reliability issues*
11 *surrounding the 69 kV line. I think the process we laid out should go*
12 *forward. But at some point the energy needs of the area are also going to*
*need to be met.*²²

13 SSVEC submits that in light of the Independent Study's findings, including the
14 need to take immediate action to resolve existing capacity, performance, and reliability
15 issues, we are at that point which Chairman Mayes references regarding the energy needs
16 of the Affected Areas. SSVEC further submits that it is time for the Commission to
17 authorize the Cooperative to proceed with the construction of the 69 kV line.

18 As SSVEC's witnesses testified at the 252 Hearing, and as demonstrated by the
19 cross examination of the Intervenor and their witnesses, the evidence submitted by the
20 Intervenor provides no suitable or viable solutions to the capacity and reliability
21 problems nor are their purported solutions supported by any credible and/or verifiable
22 analysis. As discussed in more detail below, the purported solutions have not been
23 conducted by personnel qualified to assert that these solutions are consistent with prudent
24 utility practices. Notably, none of the Intervenor witnesses who asserted that their
25 solutions are superior to the 69 kV line are registered profession engineers, have direct

26 ²² *Id.* at page 341, lines 18-22 (emphasis added.)

1 electric utility experience, or are responsible for the delivery of reliable service to electric
2 utility customers. In contrast, SSVEC has a legal “obligation to serve” its customers with
3 safe and reliable electric service.

4 The solutions presented by the Intervenorers are a myriad of short-term, stop-gapped,
5 unreliable measures that do not fully address the issues and, in some cases, rely on
6 technologies that are unproven and commercially unavailable. Nor do the solutions that
7 the Intervenorers’ have proposed, in any way resolve the reliability and performance
8 problems that exist today and that will be exacerbated in the future if the 69 kV line is not
9 built.

10 In the Decision, the Commission ordered that the Independent Study be conducted
11 to verify SSVEC findings and to ensure that all of the alternatives had been reviewed and
12 evaluated by an independent third party. The Commission stated in the Decision that:

13 *However, we are concerned that once constructed, the project will*
14 *permanently change the landscape for the impacted communities and the*
15 *manner in which electric service is provided to the Cooperative’s*
16 *customers. We need to ensure that the goals of some in the local*
17 *communities who want more investment in renewable generation to mitigate*
18 *the need for the project have been fully considered by the Cooperative. We*
19 *believe a feasibility study prepared on behalf of the Cooperative by an*
20 *independent third party is necessary for further analysis and consideration*
21 *of the issues presented, prior to proceeding with construction of the*
22 *project.*²³

23 The Independent Study that was docketed pursuant to the Decision on December
24 31, 2009, confirmed the evidence initially presented by the Cooperative at the rate case
25 hearing that expeditious construction of the 69 kV line is the only proven and viable
26 solution from a technical and economic standpoint to alleviate the performance,
reliability, and capacity constraints of the existing V-7 Feeder currently serving the
Affected Areas. The ultimate conclusions and recommendations of the Independent Study
have been further attested to by Mr. Shlatz of Navigant as further discussed below.

²³ Decision at page 39, lines 8-14 (emphasis added.)

1 Accordingly, there is no justifiable basis for the Commission to further delay construction
2 of the 69 kV line based upon the overwhelming evidence presented at the 252 Hearing
3 regarding the results of the Independent Study and the need for the immediate
4 construction of the 69 kV line. Further delay will not change the results of the
5 Independent Study and will only exacerbate the reliability and capacity problems in the
6 Affected Areas.

7 *B. The Public Forums*

8 Pursuant to the Decision, the Commission ordered the following:

9 *IT IS FURTHER ORDERED that Sulphur Springs Valley Electric*
10 *Cooperative, Inc. as a matter of compliance, shall docket by October 30,*
11 *2009, a report setting forth the manner and dates it shall conduct public*
12 *forums in the communities served by the planned 69kV line and associated*
13 *upgrades. This report shall also discuss the topics to be addressed at the*
14 *public forums and the topics shall include, but not be limited to, addressing*
15 *how renewable energy generation (in particular distributed generation)*
16 *could be incorporated into the generation plans to serve the area covered by*
the planned 69kV line and associated upgrades.

14 *IT IS FURTHER ORDERED that by July 30, 2010, Sulphur Springs Valley*
15 *Electric Cooperative, Inc., as a matter of compliance, shall docket a report*
16 *discussing the outcome of the public forums and also discussing how it*
plans to incorporate the reasonable and effective renewable energy
*proposals resulting from the public forums.*²⁴

17 On March 24, 2010, SSVEC filed a copy of its Public Forum Report for the Public
18 Forums conducted in the Affected Areas on March 9 and March 11, 2010, respectively. A
19 copy of the Public Report was introduced into evidence as Exhibit A-5. Mr. Pat Scharff
20 of TRC, one of the panelists at the Public Forums held in the Affected Areas, testified at
21 the 252 Hearing that he believed that the Public Forum Report fairly and accurately
22 represented what occurred at the Public Forums conducted in the Affected Areas.²⁵ He
23 further testified that there was an opportunity for dialogue and the free exchange of
24 ideas.²⁶

25 ²⁴ *Id.* at page 48, lines 5-15

26 ²⁵ Hr. Tr. at page 506, lines 4-10.

²⁶ *Id.* at lines 16-25.

1 Finally, at the 252 Hearing, the ALJ asked Mr. Abinah as to whether Staff believed
2 that the Cooperative complied with the Public Forum requirement of the Decision. Mr.
3 Abinah testified:

4 *To the best of my knowledge, I believe the company complied with the*
5 *Commission's requirement.*²⁷

6 Therefore, because SSVEC conducted its public forums as required by the
7 Decision, filed its Public Forum Report, and Staff testified that the Cooperative complied
8 with the Commission's requirement, SSVEC should be found to have met this compliance
9 obligation as an ordered prerequisite to the Commission providing its authorization for
10 SSVEC to commence construction of the 69 kV line.

11 **IV. THE INDEPENDENT POLL CONFIRMS THE PUBLIC'S DESIRE FOR**
12 **SSVEC TO COMMENCE CONSTRUCTION OF THE KV LINE.**

13 In support of its 252 Petition, SSVEC filed the results of an Independent Poll of the
14 Cooperative's members that was conducted January 18 to 20, 2010.²⁸ The Poll was
15 conducted by Jody Severson of Severson & Associates, a respected expert in this field
16 who has done work for cooperatives for more the past 23 years.²⁹ Mr. Severson
17 conducted a statistically valid scientific poll which showed that contrary to previous
18 claims made to the Commission, the vast majority of SSVEC members residing in the
19 Affected Areas, in fact, favor the 69 kV line and want improved electric reliability. Mr.
20 Severson testified as follows:

21 *Q. WHAT DID THE POLL DISCOVER?*

22 *A. The member-owners of SSVEC support the line by landslide margins.*
23 *Within the Sonoita, Patagonia, and Elgin area ("Affected Areas"),*
24 *the proposed line is supported by a margin of 70% in favor to 18%*
opposed. Among the entire membership, it is supported 63% to 8%,

25 ²⁷ *Id.* at page 803, line 19 through page 804, line 12.

26 ²⁸ Hr. Ex. A-1, Exhibit A.

²⁹ *Id.* A-1 at page 2, line 20 through page 3, line 6; Hr. Tr. at page 154, line 22 through page 155, line 1.

1 while the undecided number among the membership as a whole is
2 higher, 29%, as compared to 11% undecided in the affected area.
3 You would expect the undecided rate to be lower in the affected area
4 because it is an issue of direct concern there, and people are paying
5 more attention to it.

6 Q. ONE PLACE IN THE POLL SAYS THAT 63% FAVOR THE LINE.
7 LATER ON, IT SAYS THAT 83% DO. HOW DO YOU EXPLAIN
8 THE DIFFERENCE?

9 A. What you have there are before and after pictures. I designed this
10 survey using a standard political polling technique in which very
11 early on in the survey, with the minimum amount of background
12 information, we ask how they'd vote if the election were tomorrow.
13 That found support of the line at 63%, opposition at 8%, and an
14 undecided / don't know of 29% among the entire membership. That's
15 the score as it stands today – in the membership as a whole. Then we
16 asked a series of questions about the various pros and cons and their
17 opinion about how well the co-op performs its job. After they've
18 heard those pros and cons and have had more time to consider the
19 issue, we ask a second time how they would vote. That score was
20 83% in favor, 8% opposed. Almost all of the undecided people in the
21 first round moved to support the line, though opponents did pick up a
22 little strength in the Affected Areas – but still lose 3 to 1 there.³⁰

23 Mr. Severson summarized the Independent Poll's findings in his Direct Testimony
24 as follows:

25 *Among the membership as a whole, support is nearly 8 to 1 in favor
26 of the line among those who have made up their mind. In the
affected area, the line is favored by a 4 to 1 ratio among those who
have made up their minds, and they are extremely unhappy with the
reliability of their electric service. In the Affected Areas, they give
SSVEC the worst grade on reliability that I have ever seen.*³¹

He further stated at the 252 Hearing that:

*The most striking thing to me having done these sorts of polls for
more than 20 years at co-ops all over the country is that the
reliability scores that SSVEC received in the
Sonoita/Elgin/Patagonia area were literally the worst that I have
ever seen. They were 30 to 50 points below what cooperatives
ordinarily score on questions like how are they doing on keeping
blinks and outages to a minimum, how are they doing on holding
longer outages to a minimum, how quickly do they restore the*

³⁰ Hr. Ex. A-1 at page 6, line 8 through page 7, line 6.

³¹ *Id.* A-1 at page 9, lines 20-25.

power.³²

Based upon the discussion at the August 17, 2009, Open Meeting, the Commission took into consideration what it believed to be the opinions and desires of the members residing in the Affected Areas when it made its decision to prohibit construction of the line and order the Independent Study and the public forums.³³ The Independent Poll demonstrates that the public comments made at the prior Commission proceedings in these dockets, as well as many of the filed comments, represented the opinions and desires of only a small vocal and organized minority of members and do not represent the opinions and desires of the vast majority of members residing in the Affected Areas, or of the Cooperative's membership as a whole. Moreover, the vast majority of SSVEC members who attended the public comment portion of the 252 Hearing supported the immediate construction of the line and urged the Commission not to further delay the Project and cause the Cooperative to spend more dollars; especially in light of the findings of the Independent Study.³⁴ Accordingly, the Commission should take this information into consideration in determining that the granting of the 252 Petition is in the public interest.

V. FURTHER DELAY MAY RESULT IN THE POTENTIAL LOSS OF CREB AND ARRA MONEY THAT THE COOPERATIVE HAS SECURED.

Mr. Orozco provided uncontroverted testimony regarding the issues raised in the 252 Petition with respect to the Cooperative's potential loss of CREB and ARRA money

³² Hr. Tr. at page 142, lines 15-24 (emphasis added.)

³³ Decision at page 39, lines 8-19.

³⁴ At the public comment portion of the 252 Hearing, there were members of the public that gave specific examples of outages, surges, and blinks that impacted their business, finances, and/or health concerns, that demonstrated the continuing poor quality of service in the Affected Areas. Several cited appliance and equipment failures caused by electrical surges and voltage-related brownouts, including one local real estate property manager who mentioned that well pumps have failed and she expressed frustration that she had to inform people not to run water during power outages. See Hr. Tr. at page 73, line 2 through page 78, line 6.

1 for the Affected Areas if the Commission does not expeditiously grant the relief requested
2 in the Petition.

3 A. CREB Money

4 Mr. Orozco testified that SSVEC was recently awarded a CREB offering of \$6
5 million that was made available to cooperatives via the Energy Policy Act of 2005, for
6 design and construction of a 750 kW grid-connected solar electric system and that it was
7 SSVEC's intention is to install this system as part of the new Sonoita substation in the
8 Affected Areas.³⁵ When asked whether there was a time limit on the use of these funds
9 and if there was a chance that these funds might be lost if the Project was further delayed,
10 Mr. Orozco testified as follows:

11 *Yes. The Internal Revenue Service regulations pertaining to CREBs*
12 *require that the project be completed within three years starting*
13 *October 23, 2009. In order for the solar project to be fully*
14 *commissioned, the 69 kV line and substation must be fully*
15 *operational. Given the long lead time for solar equipment in today's*
16 *marketplace, SSVEC must immediately begin design preparations to*
17 *avoid the risk of losing the CREBs funding for the Affected Areas.*
18 *Given the statements that have been made to the Commission*
19 *regarding the community's alleged desire for the Cooperative to*
20 *incorporate more renewable generation into the generation plans for*
21 *the Affected Areas, it would be a shame to jeopardize installation of*
22 *this solar facility in the Affected Areas by further delaying the*
23 *Project.*³⁶

24 B. ARRA Money

25 Mr. Orozco testified that SSVEC submitted a proposal which is in final negotiation
26 for a total of \$15 million ARRA grant, commonly referred to as a "Stimulus Grant" to
expand and accelerate on-going Smart Grid and Demand-Side Management ("DSM")
activities at SSVEC. He stated that:

- 27 (i) *The grant will provide 50/50 cost share for installation of about 140 miles*
28 *of fiber optic cable to be installed mostly on SSVEC's 69 kV sub-*
29 *transmission system and automation of line equipment and substations*
30 *along that path;*

35 Hr. Ex. A-3 at page 11, line 18 through page 12, line 6.

36 *Id.* at page 12, lines 12-24.

- (ii) Automation and "smartening up" of the proposed 69 kV line to Sonoita and the new Sonoita Substation were included in our proposal; and
- (iii) The Project, if implemented in a timely fashion, would receive approximately \$1.1 million of that grant money to support the following project components:
 - (a) automation of the 69 kV switch at the new Sonoita Tap (thus allowing remote operation of the switch for increased system reliability);
 - (b) installation of fiber optic cable on the 69 kV line from the new Sonoita Tap to the new Sonoita Substation (to provide a robust communication path from the Affected Areas to SSVEC operations centers);
 - (c) installation of digital relay and control devices within the new substation (thus increasing system reliability and operational performance);
 - (d) installation of a complete System Control and Data Acquisition (SCADA) system at the substation to allow SSVEC to monitor and control substation devices;
 - (e) installation of a power line carrier, two-way communication system (commonly referred to as Automated Metering Infrastructure or "AMI") to allow real time communication between SSVEC's control center and individual meters in the Affected Areas;
 - (f) installation of approximately 2,500 new two-way meters at residences and commercial services in the Affected Areas; and
 - (g) an aggressive DSM program. This entire AMI system will allow SSVEC to implement a state-of-the-art DSM, energy efficiency, and load control program throughout the Affected Areas and significantly improve system reliability, outage response, and system operation.³⁷

When asked whether a further delay of the Project could result in a potential loss of this \$1.1 million of ARRA grant money, Mr. Orozco responded as follows:

Yes. The term of this grant is 36 months from the date of the award. SSVEC anticipates contract award within the next 30-60 days. All work must be completed within this time frame. The 69 kV line and substation will take approximately 12 to 18 months once we are allowed to re-commence design, materials procurement, and construction. However, please understand that the Smart Grid meters can not be deployed until the substation is fully commissioned and operational, which would add 6 to 8 months to the schedule. Further, the DSM interventions such as Home Energy Displays that

³⁷ *Id.* at page 13, line 1 through page 14, line 5.

1 will allow real-time pricing signals to be sent to member homes via
2 this AMI system, can not fully commence until the Smart Meters are
3 installed and participation from the community is actuated, for which
4 scheduling is yet unknown.

5 It should be noted that the backbone of this Smart Grid project is the
6 installation of fiber optic cable. If SSVEC is not permitted to build
7 the 69 kV line, the fiber will not be installed and the entire \$1.1
8 million in Smart Grid intervention proposed for the Affected Areas
9 will be lost. Given the conclusions and recommendations of the
10 Independent Feasibility Study that the 69 kV line should be built,
11 there is no reason for further delays that will put this money in
12 jeopardy for the Affected Areas.³⁸

13 There was no evidence presented at the 252 Hearing that would justify further
14 delay of this Project that could result in the unwarranted loss of any CREB and/or ARRA
15 money for the Affected Areas and the Cooperative.

16 **VI. STAFF HAS RECOMMENDED THAT THE COMMISSION GRANT THE**
17 **RELIEF REQUESTED IN THE 252 PETITION FOR AUTHORIZATION**
18 **TO COMMENCE CONSTRUCTION OF THE 69 KV LINE.**

19 Staff's testimony that the Decision be amended to permit the Cooperative to
20 construct the 69 kV line was not challenged by the Intervenors at the 252 Hearing. In
21 Staff's Direct Testimony, Mr. Abinah testified that:

22 *From a technical perspective Staff has reviewed the actions taken by*
23 *the Company and found those actions to be reasonable. . . .*
24 *Consistent with the prior Administrative Law Judge's*
25 *recommendation, Staff believes that the Company has demonstrated*
26 *the need for the line. Therefore, Staff recommends that the*
Commission grant the Company's request to amend Decision No.
71274, which will allow the Company to commence with the
*construction of the line.*³⁹

27 At the 252 Hearing, the Intervenors elected not to cross-examine Mr. Abinah on
28 Staff's conclusion that the Cooperative demonstrated the need for the 69 kV line or Staff's
29 recommendation that the relief requested by SSVEC in its 252 Petition to be authorized to
30 commence construction of the line be granted by the Commission.

³⁸ *Id.* at page 14, lines 12 through page 15, line 3.

³⁹ Hr. Ex. S-1 at page 14, line 21 through page 15, line 3.

VII. NEITHER THE EVIDENCE PRESENTED BY THE INTERVENORS IS CREDIBLE NOR DOES THE WEIGHT OF SUCH EVIDENCE DEMONSTRATE OTHER VIABLE ALTERNATIVES TO THE PROPOSED 69 KV LINE.

The Intervenor's opposed the granting of the 252 Petition on various grounds. All of those grounds were rebutted by SSVEC at the 252 Hearing in its direct and/or rebuttal evidence presented by SSVEC (and Staff) witnesses, as well as through cross-examination of the Intervenor's and their witnesses. The primary positions raised by the Intervenor's are addressed below.

A. Independence and Results of the Independent Study.

The Independent Study was prepared by Navigant and is based entirely upon the RFP and Statement of Work (which was drafted with 3SEG input), completely independent from the competing concerns. The Independent Study itself confirms this by stating from the outset that:

All findings presented herein were prepared independently, without bias or prior knowledge of feeder performance issues or concerns raised by customers and other interested parties. Methods employed to evaluate performance and supply alternatives are consistent and common utility practices and applicable industry design, performance and evaluation standards. The analysis was completed without direct or indirect⁴⁰ participation from SSVEC staff, management or its customers.

Notwithstanding, Ms. Downing and Ms. Scott testified that they did not believe the Independent Study was independent. As justification for this position, one or both raised various concerns that were directly and easily refuted by both Mr. Shlatz of Navigant and Mr. Scharff of TRC. Both Mr. Shlatz and Mr. Scharff testified at great length to the independence of Navigant and the process that was followed to ensure the integrity of the

⁴⁰ Hr. Ex. A-2, Exhibit B at page 1.

1 process.⁴¹

2 Ms. Downing also testified that she did not believe in the independence of the
3 Independent Study because SSVEC paid for the Independent Study.⁴² However, when
4 asked on cross-examination as to who should have paid for the Independent Study, Ms.
5 Downing stated, "I am not sure."⁴³

6 It should be noted that at the August 17, 2009, Open Meeting, various members of
7 the public suggested that they were uncomfortable with the Cooperative's plans to build
8 the 69 kV line without further study and independent verification of SSVEC's
9 conclusions. They urged the Commission to adopt an amendment to the rate case decision
10 that would require the independent feasibility study. In fact, two of the Intervenor, Ms.
11 Scott and Ms. Downing, appeared on August 17, 2009, and urged the Commission to
12 prohibit the building of the 69 kV line until the study was completed. Ms. Downing
13 stated:

14 *We have been pleading with the company to please do an*
15 *independent study, hiring engineers that are acceptable to both*
16 *parties, and share the information that they have with an engineering*
17 *group so we can find out what is the best solution that meets our*
18 *community needs.*⁴⁴

19 Ms. Scott stated:

20 *So I urge you to support an independent feasibility study and*
21 *Newman's, Commissioner Newman's Amendment No. 1 and*

22 ⁴¹ Both Ms. Downing and Scott challenged the independence of the Independent Study because one of the
23 members of the project team was a previous AEPCO employee. However, at the 252 Hearing, the
24 evidence showed this challenge was without merit and that the individual in question had worked for
25 AEPCO approximately a quarter of a century ago. See Hr. Ex. Downing-1 at page 6; Hr. Ex. Scott-1 at
26 page 10, line 19 through page 20, line 2; Hr. Tr. at page 222, lines 13-15; page 324 at line 24 through page
329, line 21; page 509, line 17 through page 510, line 14.

⁴² It should be noted that Ms. Downing's own witness, Mr. Magruder, proposed to the Commission at the
August 17, 2009, Open Meeting that SSVEC pay for the Independent Study. Transcript of August 17,
2009, Special Open Meeting at page 80, lines 20-23.

⁴³ Hr. Tr. at page 739, line 7.

⁴⁴ Transcript of August 17, 2010, Special Open Meeting at page 57, line 24 through page 58, line 4.

Commissioner Mayes, Amendment 1 as well.⁴⁵

Mr. Magruder also appeared at this Open Meeting and stated:

*Thus, we are here requesting an independent organization acceptable to the Staff to be funded by the utility to conduct a feasibility study.*⁴⁶

Mr. Magruder goes on to state:

*I really think that the feasibility study needs to be accomplished. I recommend approval of both Newman and Mayes Amendments No. 1 because I think they can work together.*⁴⁷

The Commission relied on these and other public statements and agreed that an Independent Study should be conducted to make sure the Cooperative had considered all the options, including renewable generation, and to provide independent verification to the Commission that the Cooperative's proposed T1 route for the 69 kV line was in fact the best possible option under the circumstances, before permitting construction to commence. Therefore, Ms. Downing, Ms. Scott, and Mr. Magruder (and others) got exactly what they asked for: An Independent Study.

Unfortunately, based upon the testimony of some of the Intervenor, it is fair to say that what Ms. Downing, Ms. Scott, and Mr. Magruder really meant when they asked and received an Independent Study, was that they wanted the Independent Study, so long as the results of that Independent Study supported something other than the construction of the 69 kV line along the proposed T1 route. Because the study corroborates the Cooperative's original analysis and conclusions, the only choice of those that at one time urged the Commission to require the Independent Study, is to now turn around and attack that very study. Mr. Magruder in his testimony goes to great lengths to try to discredit the findings and conclusions of the Independent Study. Ms. Scott and Ms. Downing have

⁴⁵ *Id.* at page 90, lines 21-24.

⁴⁶ *Id.* at page 80, lines 20-23.

⁴⁷ *Id.* at page 83, lines 5-8.

1 also questioned the independence of the Independent Study.

2 Exhibit C to Hearing Exhibit A-3 contains a presentation prepared by the Sonoita
3 Cross-Roads Forum, submitted to the Cooperative on V-7 Feeder Analysis and
4 Recommendations dated July 13, 2009, of which Intervenor witnesses Magruder and
5 Kennedy are listed as members of the Renewable Energy Committee, and Intervenor
6 Downing is listed as a team member. This document requests the Cooperative to conduct
7 an independent feasibility study. A few sentences later, it goes on to state:

8 *... we will agree with the results of such feasibility study.*

9 This is further evidence that what Ms. Downing and Mr. Magruder really meant when
10 they asked for and received an Independent Study, is that they wanted the Independent
11 Study, so long as the results of that Independent Study supported something other than
12 construction of the 69 kV line along the proposed T1 route. Moreover, Ms. Downing,
13 whose property is directly encumbered by the easement for the proposed 69 kV line,⁴⁸ and
14 who had purchased her property subsequent to SSVEC obtaining the easement for the T-1
15 route,⁴⁹ when asked at the 252 Hearing “would you have agreed with the feasibility study
16 if it came up with a solution other than the 69 kV line,” Ms. Downing responded, “Yes, I
17 probably would let it fly as long as it wasn’t on the Babacomari.”⁵⁰

18 The Intervenor also accused the Cooperative of “cherry picking” certain
19 statements from the Independent Study that the Cooperative stated formed the ultimate
20 conclusions and recommendations. Those statements are set forth in Section III.A.1
21 above. However, Mr. Shlatz of Navigant confirmed that such statements were, in fact, the
22 ultimate conclusions and recommendations of the Independent Study and of Navigant.⁵¹

23
24 ⁴⁸ Hr. Tr. at page 733, lines 8-12.

25 ⁴⁹ *Id.* at page 732, lines 14-19; page 538, lines 7-8.

26 ⁵⁰ *Id.* at page 741, lines 7-11 (emphasis added.)

⁵¹ Hr. Tr. at page 220, line 12 through page 221, line 3; Hr. Ex. A-2 at page 8, line 16 through page 11, line 3.

1 B. *The Alternatives Presented by the Intervenors are not supported by credible*
2 *analysis and/or not viable alternatives to construction of the proposed 69 kV*
3 *line.*

4 There were numerous alternatives presented by the Intervenors to the proposed
5 construction of the 69 kV line. Some of these alternatives were intended to supplant the
6 need for the proposed 69 kV line along the T-1 route. Some of the alternatives proposed
7 by the Intervenors were intended not to resolve the instant capacity and reliability
8 problem, but as stop-gap measures to further delay the construction in the hope that some
9 future technology might come along that would negate the need for the proposed 69 kV
10 line. Most of these alternatives were the same alternatives previously considered and
11 rejected by Navigant in the Independent Study and by SSVEC. Other alternatives were
12 simply not technically, commercially, or financially viable nor would they resolve the
13 reliability and capacity problem in the Affected Areas. SSVEC was able to rebut all of
14 the primary alternatives put forth by the Intervenors and their witnesses through the oral
15 rebuttal testimony, as well as through cross-examination, as reflected in the record to this
16 proceeding. Accordingly, rather than going through each and every issue herein, the
17 following summarizes several key points that the evidence demonstrates.

18 Regarding the testimony of the Intervenors generally, Mr. Orozco summed up the
19 primary issue regarding the ultimate responsibility for resolution of the capacity and
20 reliability problem for the Affected Areas as it relates to the proposals set forth in such
21 testimonies by stating from the outset:

22 *Your Honor, as a registered engineer in the State of Arizona, I have a*
23 *professional obligation to protect the public welfare and safety. And*
24 *that's under the Arizona board of technical registration statutes that*
25 *established that as a registered professional engineer.*
26

In reading the testimony and in hearing the ideas being thrown at me, why don't you put a generator here, why don't you put a generator there, I am finding a lack of engineering practicality. And I believe one of the other engineers that testified today used the word prudence.⁵²

Mr. Shlatz of Navigant, who is also a Professional Engineer and an expert in his field, testified generally about the Intervenor's proposals and conclusions related to the Independent Study as follows:

The general comment I would make is that the findings, conclusions, and the limited analysis don't reach or meet the level of rigor that's commonly expected by electric utilities, small and large. It doesn't meet that minimum requirement in my view.

Further, my view is that there are many erroneous conclusions, and partly because taking what I found was the continued identification of specific findings of facts within the study but not taking them in, not taking them in the context of the entire study, taking snippets of finding and using those to misinterpret the overall conclusions and findings in our report, somewhat disturbing but I am somewhat accustomed to that. And sometimes it is understandable, given the limited background in electric utilities, electrical utility engineering, absence of professional registration in engineering, that's a common phenomena that I encounter, misunderstanding the conclusions I have drawn or taking them out of context and misinterpreting the results.⁵³

In characterizing Mr. Magruder's testimony and proposals, Mr. Orozco went on to testify that:

And I have read Mr. Magruder's presentation several times. And with all due respect, I find it a hodgepodge of technologies that are an attempt to somehow squeeze out just a few more days, months, I am not sure how long that he claims that we could do something else, put a generator somewhere, and calls for yet more study.⁵⁴

Mr. Orozco is a licensed Professional Engineer (PE) in the State of Arizona and is considered an expert in his field. Both Mr. Shlatz and Mr. Scharff, who also testified at the 252 Hearing are Professional Engineers. Navigant and TRC are also nationally

⁵² Hr. Tr. at page 386, line 16 through page 387, line 2.

⁵³ *Id.* at page 194, line 19 through page 195, line 14.

⁵⁴ *Id.* at page 398, lines 5-11.

1 renown engineering firms with expertise working for and with utilities on a myriad of
2 issues including utility transmission and distribution design, operations and planning, as
3 well as expertise in renewable technologies in relation thereto. Mr. Shlatz testified that
4 approximately a dozen individuals worked on aspects of the Independent Study with
5 various expertise and that such individuals were either engineers or had expertise in the
6 areas associated with the Statement of Work for the Independent Study.⁵⁵

7 Neither Mr. Magruder, Mr. Rowley, nor any of the other Intervenors or Intervenor
8 witnesses are Professional Engineers. None of the proposals set forth in the testimony of
9 the Intervenors or their witnesses are supported by any qualified or competent engineering
10 analysis. Nor do any of the Intervenors or their witnesses bear any responsibility for such
11 proposals. That responsibility lies with the utility and its professional personnel.

12 A.A.C. R14-2-208.A and C provide that “each utility shall be responsible for the
13 safe transmission and distribution of electricity until it passes the point of delivery to the
14 customer” and that “each utility shall make reasonable efforts to supply a satisfactory and
15 continuous level of service.” (Emphasis added.) Moreover, Staff and its technical experts
16 have reviewed the information presented by SSVEC and in the Independent Study and
17 have recommended that SSVEC proceed with construction of the 69 kV line and
18 substation.

19 At the end of the day, it comes down to responsibility for this decision which lies
20 with SSVEC and its professional personnel. To illustrate this point, at the 252 Hearing,
21 the following exchange occurred between Cooperative’s Counsel and Mr. Magruder:

22 Q. One more. Mr. Magruder, you heard yesterday Mr. Orozco testify as
23 a licensed professional engineer that he has personal responsibility
24 for the public welfare and safety regarding any of the facilities that
he designs, engineers and constructs? Do you recall that testimony?

25 A. I recall that testimony.

26 ⁵⁵ *Id.* at page 220, lines 1-11.

1 Q. Okay. And to the extent that he designs or constructs a system that
2 fails, resulting in damage to persons or property, his license would
3 be subject to sanction, wouldn't it, to the best of your knowledge?

4 A. To the best of my knowledge.

5 Q. And hypothetically if Mr. Orozco was to adopt your
6 recommendations as set forth in your testimony, and you were wrong,
7 hypothetically, hypothetically let's just say you were wrong and there
8 is damage to Sulphur's system as a result, or its customers, or
9 damage to its, I am sorry, damage to its systems or its customers,
10 would you agree with me that Mr. Orozco and perhaps Sulphur as a
11 regulated utility would bear that responsibility?

12 ...⁵⁶

13 A. I don't want to get him trouble.

14 Q. I know you don't. He adopts your recommendations and you were
15 wrong in your recommendations, and there ultimately is damage to
16 Sulphur's system. I am not talking about a burned out refrigerator. I
17 am talking about damage to the system as a result of something that
18 Mr. Orozco designed and installed as a result of your
19 recommendation. Is there, or is he, is his license subject to sanction?
20 Does he bear responsibility as the one that did it?

21 A. I am not familiar with the license issue with respect to registered
22 professional engineers, but...

23 Q. Okay, that's fair. But would you agree with me that if he adopts your
24 recommendation and his license was subject to sanctions as a result
25 of him adopting your recommendations, you wouldn't bear any
26 responsibility for making those recommendations, would you?

27 A. No, I won't. I understand. And I understand where you are coming
28 from. But there are many things that have been built according to
29 IEEE standards, REA standards, and any other long set of standards
30 by professional engineers, registered professional engineers. Many
31 failed. And I am not, I am not pushing for Mr. Orozco to ever fail, I
32 only want him to be successful. But there have been many systems
33 that have been designed by the top people in their category and have
34 still failed.

35 Q. So finally, again, would you agree with me that the potential exists
36 for Mr. Orozco to have to bear sanctions against his license but you
37 would bear no responsibility if he adopt your recommendation?

38 A. I will have to agree to that.⁵⁷

39 It is easy for the Intervenors to criticize the Cooperative and Navigant and to
40 propose anything and everything as a potential solution to resolve the V-7 Feeder problem

⁵⁶ Unresponsive Q&A omitted. Hr. Tr. at page 797, line 13 through page 798, line 10.

⁵⁷ Hr. Tr. at page 796, line 18 through page 799, line 17.

1 without providing sound engineering analysis to support such proposals. When
2 questioned by Mr. Magruder, Mr. Shlatz testified that alternative supply options would
3 need to be available 99.99 percent of the year to provide comparable firm capacity as a
4 new 69kV line, but none of the alternatives came close to meeting this criterion. In fact,
5 several of the renewable energy options advocated by the Intervenors would operate, at
6 most, 20 percent of the year, well below the greater than 99.99 percent cited by Mr.
7 Shlatz.⁵⁸ Yet, Mr. Magruder and the Intervenors nonetheless suggested that renewable
8 energy and other options are just as reliable as a new 69 kV line, but are unable to provide
9 any analysis or evidence to support this premise.

10 According to the expert testimony of Mr. Orozco, Mr. Magruder's claim that
11 increasing the rating of the Huachuca transformer will resolve the capacity problem is not
12 an acceptable utility practice⁵⁹. This important omission confirms that Mr. Magruder is
13 not familiar with common utility practices, and he fails to look at the "total picture" when
14 evaluating capacity constraints. It also overlooks the capacity and voltage problems that
15 currently exist on the V-7 Feeder. Moreover, Ms. Scott erroneously claimed in her
16 opening statement that the load on the V-7 Feeder is projected to grow by only 1000 kW
17 over 20 years⁶⁰, when the plain language of the Independent Study on page 31
18 unequivocally states, "The load forecast indicates about 2500 kW of new load will be
19 added to V-7 Feeder over the next 20 years prior to losses, an increase of about 40
20 percent." Applying logic similar to this erroneous statement, the Intervenors are able to
21 assert that options other than the 69 kV line will provide comparable firm capacity and
22 resolve performance problems because they bear no responsibility for electric service to
23 SSVEC members. As discussed above, SSVEC by law has such responsibility.

24
25 ⁵⁸ *Id.* at page 217, lines 10-22.

26 ⁵⁹ *Id.* at page 406, line 7 through page 407, line 4.

⁶⁰ *Id.* at page 124, lines 13-14.

1 In summary, the Intervenor's position that options other than a new 69 kV line are
2 acceptable is untenable and not supported by evidence offered by Intervenor witnesses
3 during this proceeding. In contrast, the Independent Study's conclusion that the 69 kV
4 line is the best solution has been affirmed by expert testimony provided by Mr. Shlatz, on
5 behalf of Navigant, as well as SSVEC, and Commission Staff witnesses.

6 C. Line Siting Issues

7 There was evidence presented at the 252 Hearing confirming opposition to the
8 proposed 69 kV line not because of a need to address quality of service issues, but strictly
9 based upon routing or siting issues related to aesthetic or alleged environmental concerns.
10 At the February 10, 2010, Procedural conference, Mr. Rowley stated:

11 *...it is not the line itself as much as the location. And we feel that*
12 *using an existing utility corridor with overhead power lines would*
13 *better serve the community than destroying our views. Our*
views are one of our resources in the area and that's where we
*really have the heartburn with.*⁶¹

14 Mr. Rowley subsequently confirmed this on cross-examination:

15 Q. *And I guess I am trying to, what I am trying to understand is your*
16 *issue in this case that you don't think the company needs this line, or*
you just don't like where they are wanting to put the line?

17 A. *It is more to me that the location of the line.*

18 Q. *So if they had found a route that didn't go through the Babacomari*
19 *easement that they obtained, you wouldn't necessarily have*
intervened in this case?

20 A. *No, sir.*⁶²

21 When asked at the 252 Hearing "would you have agreed with the feasibility study
22 if it came up with a solution other than the 69 kV line," Ms. Downing responded, "Yes, I
23 probably would let it fly as long as it wasn't on the Babacomari."⁶³ Ms. Downing further
24 testified that her "...main concern with going across the Babacomari Ranch are

25 ⁶¹ Transcript of February 10, 2010, Procedural Conference at page 9, lines 9-15.

26 ⁶² Hr. Tr. at page 648, lines 7-15.

⁶³ *Id.* at page 741, lines 7-11 (emphasis added.)

1 environmental in nature.⁶⁴ Dr. Kennedy also testified as to her concerns regarding the
2 proposed 69 kV line for “environmental” reasons.⁶⁵

3 These are just a few examples of issues raised by the Intervenor at the 252
4 Hearing that have nothing to do with the jurisdictional basis upon which the Commission
5 asserted jurisdiction in this matter when it prohibited the construction of the 69 kV line.
6 These issues go to environmental and aesthetic concerns that relate to line siting pursuant
7 to A.R.S. § 40-360 *et seq.* The Decision expressly stated that “*The Commission’s Line*
8 *Siting Committee does not have jurisdiction over the siting of the proposed 69 kV line...*
9 .”⁶⁶ Accordingly, any evidence presented that go to issues related to line siting should be
10 afforded no weight in this proceeding.⁶⁷

11 *D. Utilizing the Existing V-7 Route is not a Viable Alternative*

12 The Intervenor has suggested the utilization of the existing V-7 corridor as an
13 alternative to building the 69 kV line along the proposed T-1 route. The evidence,
14 however, demonstrates that SSVEC had considered this option but found it not a viable
15 alternative for several reasons. First, upgrading the existing V-7 Feeder would
16 significantly increase the cost.⁶⁸ Second, based upon the legal analysis that was
17 conducted regarding the prescriptive easement that exists for the V-7 Feeder, SSVEC
18 would be required to secure a new and more burdensome easement from all property
19 owners along the V-7 Feeder route.⁶⁹ Ms. White testified that this was not a viable
20 option.⁷⁰ Moreover, SSVEC had provided Staff with information regarding this issue.
21 Mr. Abinah testified as follows:

22
23 ⁶⁴ *Id.* at page 718, lines 23-24.

24 ⁶⁵ *Id.* at pages 353-368.

25 ⁶⁶ Decision at page 38, line 19-20.

26 ⁶⁷ See statement of SSVEC Counsel at Hr. Tr. page 595, lines 4-22.

⁶⁸ See Hr. Ex. A-6, Ex. A at page 6-7.

⁶⁹ See Hr. Ex. A-12 which was introduced to demonstrate some of SSVEC’s legal due diligence in regard to this issue.

⁷⁰ Hr. Tr. at page 577, lines 7-10.

1 ...Staff does not believe it will be cost effective, nor viable to do so
2 for the following reasons:

- 3 1. Number of property owners, including governmental agencies
4 such as Arizona State Land involved in the easement;
- 5 2. Cost to obtain right of way;
- 6 3. Risk involved in modifying the easement (such as litigation
7 risk); and,
- 8 4. The amount of time and money that will be expended.⁷¹

9 Staff cites to the approximately 98 property owners that would have to consent to
10 easements and/or be compensated through eminent domain proceedings and that based on
11 discussions the Cooperative has had with several landowners, that such landowners were
12 adamant that they would oppose any such efforts to modify the existing prescriptive
13 easement.⁷² Staff also discusses the 2-3 year regulatory approval process and the
14 estimated additional cost of \$1.8 to \$2.2 million in additional costs, surveys, and studies
15 that does not even include the cost of legal actions.⁷³

16 Moreover, Navigant did not find this option preferable to the T-1 route. In addition
17 to the cost and easement issue, Navigant found that this route would have a greater visual
18 impact and would affect a greater number of residential viewers and travelers along the
19 highway.⁷⁴ Mr. Shlatz further testified that:

20 *The T-2 option would experience much more traffic than the other T-
21 1 option where no roadways exist along many parts of it. And the
22 roadways that are there tend to be much more rural than the primary
23 highways which are along the T-2 route.*⁷⁵

24 Finally, from the public comment session that was held at the beginning of the 252
25 Hearing, it was clear that residents living along the V-7 route oppose any efforts to try and
26

⁷¹ Hr. Ex. S-1 at page 6, lines 4-11.

⁷² *Id.* at page 7, lines 17-26.

⁷³ *Id.* at page 8, lines 13-18; page 9, lines 7-10.

⁷⁴ Hr. Ex. A-2, Exhibit B at page 77.

⁷⁵ Hr. Tr. at page 316, lines 17-21. T-2 refers to the existing route of the V-7.

1 re-route the proposed 69 kV line, and they even submitted a petition containing the
2 signatures of approximately one half of the property owners.⁷⁶ As this option was not
3 found to be a viable alternative by SSVEC, Navigant, or Staff for the reasons stated
4 above, as well as the opposition expressed by the property owners in the area, there is no
5 basis to find that this option is a viable alternative to the proposed T-1 route for the 69 kV
6 line.

7 *E. Construction of the Proposed Sonoita Substation without the 69 kV Line*
8 *Makes No Practical Sense*

9 Despite Mr. Magruder's mistaken claims that "there does not presently exist a
10 significant reliability problem in the V-7 service area,"⁷⁷ Mr. Magruder advocates that the
11 construction of the proposed Sonoita "substation should not be delayed."⁷⁸ However, as
12 Mr. Shlatz and Mr. Orozco testified, commencement of construction of the substation
13 without the 69 kV line would not be prudent and is currently prohibited by the Decision.

14 At the 252 Hearing, Mr. Shlatz testified as follows regarding Mr. Magruder's
15 recommendation for immediate construction of the substation:

16 *Mr. Magruder is advocating the construction of a substation built at 25,000*
17 *volts, 25,000 volts incoming and 25,000 volts outcoming with the premise*
18 *that by doing so reliability will improve by virtue of having circuit breakers*
on independent feeders from that substation prior to the construction of a
69kV line or possibly other local supply options.

19 *The fallacy in that approach, or one might, to be charitable, it is redundant*
20 *because in effect the company has that today. If we go back to the prior*
21 *page where we show the circles which are representations or illustrations of*
22 *where the reclosers are located, in effect, those circuit breakers exist today.*
23 *So it would make no sense whatsoever to build them today, to install those*
circuit breakers, when in effect that's an existing protection configuration as
we have it today. So I found that recommendation to be curious at best and,
in my view it struck me, as someone who has not been involved in electric
utility system design, operations, planning, or protection coordination and
*design. It was that simple.*⁷⁹

24
25 ⁷⁶ See Hr. Tr. at page 12, line 12 through page 36, line 8.

26 ⁷⁷ Hr. Ex. Downing-2 at page 29, line 10.

⁷⁸ *Id.* at line 24.

⁷⁹ Hr. Tr. at page 207, line 9 through page 208, line 4.

1 Mr. Shlatz's testimony also confirmed that the substation alone will not improve
2 V-7 Feeder reliability and performance and that a new 69 kV line is needed to provide the
3 requisite electrical support for the new substation.⁸⁰ Moreover, as the Independent Study
4 confirmed, as also testified to by Mr. Shlatz, capacity has to be firm, reliable, and
5 available when needed. In response to questions from Mr. Magruder, Mr. Shlatz testified
6 that local distributed generation would not achieve the 99.99 percent level of availability
7 that a new 69 kV line can achieve.⁸¹ Mr. Shlatz also explains why distributed generation
8 cannot be relied upon to provide firm capacity on a radial distribution line such as the V-7
9 Feeder due to the inability to remain on line during normal operating events.⁸² Lastly,
10 distributed generation does very little to solve reliability or performance problems and is,
11 therefore, not a preferred solution.⁸³

12 Mr. Orozco testified that SSVEC believed that the Commission's Decision
13 prohibited the Cooperative from moving forward with Project which includes the
14 substation.⁸⁴ He also testified that:

15 *But most importantly, as testified by Mr. Shlatz and others, putting the*
16 *substation in without a source doesn't make any sense. We already have the*
17 *reclosers. We already have as good protection as we can get. If there is no*
*supply, it makes no sense to build the substation.*⁸⁵

18 Once the Commission authorizes the Cooperative to commence construction of the
19 69 kV line, SSVEC will move forward with the proposed Sonoita substation as the 69 kV
20 line will provide the supply that makes the substation viable.

21
22
23
24 ⁸⁰ *Id.* at page 209, lines 16-20; page 210, lines 1-12.

25 ⁸¹ *Id.* at page 218, lines 2-16.

26 ⁸² *Id.* at page 211, lines 12 through page 212, line 18.

⁸³ Hr. Ex. A-2, Exhibit B at page 5.

⁸⁴ Hr. Tr. at page 407, lines 12-24.

⁸⁵ *Id.* at page 407, line 25 through page 408, line 5.

F. Outage Information

1. V-7 Feeder Outages versus Customer Outages

The Intervenors took issue with SSVEC's prior statements that the V-7 Feeder has experienced an average of 270 outage hours over the last year. In fact, in Mr. Magruder's testimony,⁸⁶ he provides his opinion and analysis as to why he believes the number is not correct and that the average annual customer outages on the V-7 Feeder is only approximately three (3) hours as set forth in the Independent Study.⁸⁷ As the evidence presented at the 252 Hearing demonstrated, both figures are correct, but are really an "apples to oranges" comparison. Ms. White initially attempted to clear this matter up for the Intervenors prior to their filing their testimony by stating in her Direct Testimony the following:

As stated in SSVEC's Reply to Ms. Scott's Response in Opposition, Docketed January 26, 2010, there are multiple indices used for reporting outage data, each for specific analysis purposes. SSVEC's 270 Average Total Hours Out is a total system analysis index which calculates and compares the performance of all SSVEC's feeders (this analysis/comparison is shown in said September 22, 2008, mass mail communication in Exhibit A, in graph titled "V7 Feeder Outages and Length in Miles as Compared to all SSVEC Feeders"). The Independent Feasibility Study's 3 Annual Average Outage Hours per Customer is a calculation for specific feeder analysis. Therefore, the two indices are not comparable, and as the Independent Feasibility Study only provided for analysis of the V7 Feeder, Navigant Consulting, Inc ("Navigant") would not have made these comparisons.⁸⁸

At the 252 Hearing, Ms. White once again reiterated that the 270 outage hours related to total feeder hours and not customer hours.⁸⁹ She also provided a more detailed analysis regarding these calculations.⁹⁰ Mr. Shlatz was asked to explain the discrepancy

⁸⁶ Hr. Ex. Downing-2 at page 62, Section 6.2.

⁸⁷ Mr. Magruder goes as far as saying that the Cooperative's use of the 270 hours is misleading. See Hr. Ex. Downing-2 at page 6, line 13.

⁸⁸ Hr. Ex. A-6 at page 6, line 22 through page 7, line 6.

⁸⁹ Hr. Tr. at page 564, lines 7-19.

⁹⁰ *Id.* at page 561, line 20 through page 567, line 2; Hr. Ex. A-10.

1 between the 270 outage hours on the V-7 Feeder claimed by the Cooperative, versus the
2 three (3) customer hours stated in the Independent Study. Hopefully, Mr. Shlatz put the
3 issue to rest once and for all when he was asked to reconcile the two numbers when he
4 testified as follows:

5 *Two words, common sense. Common sense dictates that if there*
6 *were really 270 hours of outage per year, that would be a clear call*
7 *that something is terribly wrong and action would have been taken.*
8 *Just seems to me it is taken out of context, and if taken in the proper*
9 *context, one, knowledge of this industry even on a rudimentary basis*
10 *would realize, you know, the intent is not to suggest there really are –*
11 *everybody is out of power for 270 hours a year. You just have to*
12 *apply common sense and understand that's not the intent.*⁹¹

13 2. Outages Subsequent to the Decision

14 Ms. White testified to two significant outages in December 2009 that occurred in
15 the Affected Areas subsequent to the issuance of the Decision. Those outages totaled
16 more than six (6) customer hours and impacted more than 11,500 customers. Ms. White
17 explained the statement made in the 252 Petition that had the 69 kV line and substation
18 been in place, the outages would have been of shorter duration and impacted fewer
19 customers. Ms. White testified as follows:

20 *The outages experienced in December 2009 are perfect examples of*
21 *the number of customers which may be affected by an outage on the*
22 *existing V7 feeder line which currently serves the Affected Areas.*
23 *Further, it doesn't matter what is causing the outage - whether a*
24 *natural occurrence of weather and/or animals/birds, or by overload*
25 *conditions, of which both occurred on one of these outages – the*
26 *issue is how many are affected. Not all significant outages in the*
Affected Areas are full substation outages, rather those are minimal
as shown in the Independent Feasibility Study. However, in regard
to the December 23, 2009, outage which affected 2317 customers for
nearly five (5) hours, and which was caused from a natural weather
occurrence, the outage terminated at a 3-phase protection device on
the main feeder line in Elgin. Because this device was near the
'beginning' of the V7 feeder, once it operated, everyone from that
point to the very end of the main feeder and all the taps were out of
power. The fault location was later identified to be between Sonoita
and Elgin. This outage exemplified how the implemented Project

⁹¹ Hr. Tr. at page 335, lines 13-23.

would have reduced the statistics of the outage by the number of customers affected and the number of hours out.

As stated in said September 22, 2008, mass mail communication in Exhibit A, the proposed Project's Sonoita Substation will split the existing 360-mile V7 single feeder into four separate feeders of considerably lesser length and number of customers per feeder. In the December 23, 2009, outage, with the fault location being between Sonoita and Elgin, a protection device nearer to the proposed Sonoita Substation, would have operated – which would have isolated the outage solely to those people on that particular new feeder from the Sonoita Substation which would serve Eastern Sonoita and some of Elgin. This would have reduced the number of customers affected as the remaining feeders, which would serve the Affected Areas of Canelo, Patagonia, North, South and West Sonoita, would have remained in power.

Further, due to the shorter length and configuration of the new feeder from the Sonoita Substation, the time necessary for SSVEC crews to conduct patrol to locate the fault, repair as necessary, coordinate the protective equipment, and re-energize the line would have reduced the number of outage hours significantly.⁹²

Despite Intervenor statements to the contrary, SSVEC has never claimed that the new 69 kV line will eliminate all future outages. Of course there will always be outages caused by nature. However, the new 69 kV line and substation will split the 360-mile long V-7 single feeder into four separate feeders. Therefore, instead of an outage potentially impacting everyone on the V-7 Feeder, the outage will impact a smaller segment of customers and the ability to restore service to that smaller segment will be greatly increased. The reconfiguration of the V-7 Feeder into four new feeders also will stabilize voltages, thereby avoiding brownouts and minimizing damage to customer equipment. The shorter lines also will significantly reduce the number of “blinks” or momentary operations the V-7 Feeder currently experiences, thereby reducing the inconvenience customers served by the V-7 Feeder have experienced, a problem that was confirmed in statements offered by many SSVEC customers during the public comment session.

⁹² Hr. Ex. A-6 at page 5, line 7 through page 6, line 11.

1 G. Miscellaneous Issues

2 1. Serving New Mining Load with the Proposed 69 kV Line

3 There were claims made at the public comment session that was held at the 252
4 Hearing that SSVEC was intending to serve potential new mining operations with the
5 proposed 69 kV line. Additionally, Mr. Magruder in his testimony states:

6 *It appears to me that this line is a precursor for the three on-going*
7 *mining exploration sites in the Patagonia Mountains, in Santa Cruz*
8 *County.*⁹³

8 These claims are completely untrue as confirmed by Ms. White when she testified at the
9 252 Hearing as follows:

10 *The Rosemont mine is out of SSVEC's territory. It is already posted on*
11 *TEP's website indicating that they are making plans to serve it with the 138*
12 *kV line. In public comment session there was mention of another mine*
13 *called the Wildcat mine. Again, it seems to be outside of SSVEC's territory.*
14 *This is something that UNS and/or TEP – I don't really know where it falls*
15 *within the territory – would be serving. And in order for us to do any type*
16 *of serve on that would require agreements, border agreements, quite a legal*
17 *process.*⁹⁴

15 Mr. Shlatz further refutes Mr. Magruder's premise which SSVEC could use TEP's
16 138 kV line as an alternative to the 69 kV line by confirming it would be impractical to do
17 so.⁹⁵ Mr. Shlatz, in response to questions raised by Mr. Magruder, indicated it would take
18 several years for permitting and construction and the line could not be built in time to
19 meet the immediate needs of SSVEC customers.⁹⁶ Moreover, Mr. Shlatz testified that the
20 in-service date of a new line that would be used to serve the mine is merely speculative,
21 confirming that the Cooperative has a responsibility to take immediate action to resolve
22 problems that currently exist on the V-7 Feeder.⁹⁷ These facts amply demonstrate that
23 Intervenor witnesses were simply raising any other option, regardless of timing or

24 ⁹³ Hr. Ex. Downing-2 at page 12, lines 4-5.

25 ⁹⁴ Hr. Tr. at page 554, lines 2-13.

26 ⁹⁵ *Id.* at page 262 line 25 through page 263, line 6.

⁹⁶ *Id.* at page 265, lines 3-7.

⁹⁷ *Id.* at page 265, lines 8-13.

1 feasibility, as a way to avoid construction of the 69 kV line. Further, in response to claims
2 that the 69 kV line would be used to serve mine load, Mr. Shlatz testified that the 69 kV
3 line, even if double circuited, would not have sufficient capacity to serve the 140 MW of
4 anticipated mine load.⁹⁸

5 2. Exhibit 1 to Dr. Kennedy's Testimony

6 SSVEC also refuted the information contained in Dr. Kennedy's Direct Testimony.
7 Attached to her testimony (Hearing Exhibit Rowley-1) was an exhibit that Dr. Kennedy
8 prepared for Mr. Rowley that contained various graphs relating to average kW data.
9 However, when asked if she had concerns regarding these graphs, Ms. White testified:

10 *Yes, I do. The graphs do not depict system information as per*
11 *standard utility practice. The 15-minute data, of which a definition*
12 *was provided with the data request to Ms. Downing in DR 110 A is*
13 *an average of that period. These graphs average an average. This is*
14 *not a practical method for determining any type of analysis, but*
15 *especially for power analysis.*

16 *The standard utility practice of analysis for load planning is peak*
17 *maximum of the outage. Therefore, the direction Mr. Rowley*
18 *provided indicates a lack of knowledge about proper analysis*
19 *guidelines and information for representation of facts in this graph.*⁹⁹

20 3. Mr. Porter's Analysis

21 SSVEC also refuted the testimony of Mr. Porter. Mr. Porter presented testimony
22 on behalf of Mr. Rowley that contains an analysis of monthly electricity bills of SSVEC
23 members based on the net present values of the five technically feasible options for the
24 Project as described in the Independent Study.¹⁰⁰ However, on cross examination, Mr.
25 Porter admitted the following as it related to his analysis:

26 i) He was not aware that SSVEC was a non-profit and could not take
advantage of federal tax benefits;

⁹⁸ *Id.* at 340, lines 11-18.

⁹⁹ *Id.* at page 541, line 14 through page 542, line 1.

¹⁰⁰ Hr. Ex. Rowley-3.

1 ii) He used the SSVEC 2008 Annual Report which contained 2007
2 information;

3 iii) He did not take into consideration any standard methodology applied to
4 either cost of service or rate design;

5 iv) He did not take into consideration substation, land or permitting costs; and

6 v) Energy storage using sodium sulfur is not a mature technology that has been
7 widely adopted by utilities in the U.S.¹⁰¹

8 Moreover, Ms. White testified that the rate analysis alone that was prepared by Mr. Porter
9 is not enough to justify the options other than the 69 kV line.¹⁰² Based on the foregoing,
10 Mr. Porter's testimony should be rejected.

11 **VIII. THE COOPERATIVE HAS MET THE LEGAL STANDARD UNDER**
12 **WHICH THE COMMISSION HAS CLAIMED JURISDICTION.**

13 In the Decision, the Commission asserted jurisdiction to prohibit the Cooperative
14 from constructing the 69 kV line and ordering the Independent Study and public forums
15 based on the following:

16 *The Commission's Line Siting Committee does not have jurisdiction*
17 *over the siting of the proposed 69 kV line, and the Commission does*
18 *not design utility infrastructure. However, the Commission does*
19 *have the authority to ensure that the Cooperative is providing safe*
20 *and reliable service. The Cooperative is responsible for designing*
and operating a safe and reliable system for all of its members. The
Cooperative submitted evidence that the line is currently at
*capacity.*¹⁰³

21 A.A.C. R14-2-208.A and C provide that "each utility shall be responsible for the
22 safe transmission and distribution of electricity until it passes the point of delivery to the
23 customer" and that "each utility shall make reasonable efforts to supply a satisfactory and
24

25 ¹⁰¹ Hr. Tr. at page 685, line 4 through page 688, line 5.

¹⁰² *Id.* at page 544, lines 8-10.

26 ¹⁰³ Decision at page 38, lines 19-23 (emphasis added.) The Cooperative does not agree that this was a proper exercise of jurisdiction, see Footnote No. 7, *supra*.

1 continuous level of service.”

2 The Commission ordered the Independent Study to ensure that there was
3 independent third party verification of the manner (the Project) in which the Cooperative
4 intended to comply with its public utility requirements to provide safe and reliable electric
5 service to the Affected Areas pursuant to A.A.C. R14-2-208. The Independent Study, as
6 well as the evidence presented at the 252 Hearing by SSVEC (and corroborated in the
7 Staff recommendation) clearly demonstrates the need for the 69 kV line and for the
8 resumption of the Project.¹⁰⁴ The evidence demonstrated that the proposed 69 kV line is
9 the most viable, cost-effective alternative to resolve the reliability, performance, and
10 capacity problems in the Affected Areas and to expeditiously alleviate what the Navigant
11 witness testified as an “emergency” situation.¹⁰⁵ The Cooperative has, therefore, satisfied
12 the Commission’s concerns as expressed in the Decision. Any further Commission-
13 imposed delay will result in additional degradation of the quality of service in the
14 Affected Areas, which is clearly not in the public interest. As the Commission already
15 acknowledged in the Decision that the Commission “does not design utility
16 infrastructure,” and having satisfied the Commission’s concerns regarding the Project, the
17 ability to move forward with the Project should now be left to member-elected Board of
18 Directors of the Cooperative and its management.¹⁰⁶

19 ...

20 ...

21 ...

22
23 ¹⁰⁴ There was no credible evidence presented at the 252 Hearing that would suggest that that the
24 Cooperative’s plans to construct the 69 kV line would constitute acting in a manner that is “unjust,
25 unreasonable, unsafe, improper, inadequate or insufficient” that would justify a further delay of the
26 Project. See A.R.S. § 40-321. In fact, the evidence presented by SSVEC, including the Independent
Study, demonstrates the complete opposite, which is why the 252 Petition should be granted.

¹⁰⁵ Hr. Tr. at page 203, line 8 through page 204, line 9.

¹⁰⁶ See generally, *Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.*, 207 Ariz. 95, 83 P.3d 573
(App. 2004); *Arizona Corp. Comm’n ex rel. Woods*, 171 Ariz. at 286, 830 P.2d at 807 (1992).

1 IX. CONCLUSION.

2 The evidence presented at the hearing demonstrates that SSVEC has fully complied
3 with the Decision and should be authorized to resume the Project and commence
4 construction of the 69 kV line along existing easements and a new substation located in
5 Sonoita. Further delay will not change the recommendations and conclusions of the
6 Independent Study or the current substandard situation regarding the V-7 Feeder.
7 Moreover, further delay will result in additional degradation of the quality of service to
8 the Affected Areas, limit SSVEC's ability to serve new customers, and cost the
9 Cooperative and its members even more money than has already been expended as a
10 result of the Decision.¹⁰⁷

11 Ultimately, it is the Cooperative that is responsible for providing safe and reliable
12 service. Its analysis and conclusions are supported by Navigant in the Independent Study,
13 as well as Staff, regarding the need for construction of the 69 kV line along the route
14 proposed by the Cooperative where easement rights currently exist. The Cooperative
15 must operate strictly in accordance with prudent utility standards and must adequately
16 prepare for the future. It may not simply "just try different things" to satisfy a small group
17 of members whose interests are not aligned with that of a regulated utility obligated to
18 provide a lifeline service. As Mr. Shlatz testified at the 252 Hearing:

19 *...from a prudent planning system operations and engineering perspective,*
20 *you have to plan for your system in a sequential and orderly manner. That*
21 *means looking ahead when facilities are nearing their capacity limits. When*
22 *the company or the lines begin to experience performance and reliability*
23 *problems, you take action ahead of time; you don't wait until the last minute.*

24 *It appears that the company over the past two decades has sought to do that.*
25 *We are at the point now, and which I succinctly state in the report, there is*
26 *an immediate problem that needs to be taken care of now that can't be*
ignored. Basic engineering principles and the utility's obligation to serve
and provide reliable, safe, and continually available electric service is being

¹⁰⁷ SSVEC estimates that it has spent well in excess of \$500,000 in order to comply with the requirements of the Decision relating to the Project.

1 *undermined by the performance of this feeder. Something does need to be*
2 *done, and they can't be Band-Aid solutions. They should be a solution that*
3 *meets near-term and long-term requirements on that feeder.*¹⁰⁸

4 At the March 11, 2010 Public Forum, one of the members residing in the Affected
5 Areas made the following statement:

6 *I'm a co-op member, and I reside in Sonoita. The only thing I know*
7 *about power and distribution and all those things is how to use it.*
8 *But I do know that what we have is unreliable. Two years ago, my*
9 *husband had a massive heart attack and was in the Tucson heart*
10 *hospital for five weeks. At the end of that time, we were told that they*
11 *could do nothing more, and he wanted to come home to die. Well the*
12 *big factor of whether or not we should come home was whether or*
13 *not the power might go off, because he had to have oxygen and that*
14 *was supplied by electricity. Fear of unreliable power should not*
15 *dictate those kind of decisions. And yet, for many of our people and*
16 *our residents in our area, for older people, it does. I brought my*
17 *husband home, and fortunately he was able to live out his life*
18 *according to god's timetable and not a power outage. But that was*
19 *definitely a concern and a fear.*¹⁰⁹

20 From the Cooperative's perspective, the above statement embodies what this
21 proceeding is now all about and should define for the Commission, what are the public
22 interest considerations for this lifeline service. Based on the evidence presented, the
23 proposed Project and associated 69 kV line and substation is the option which:

- 24 (i) Provides the most optimal long-term proven and viable solution to improve
25 feeder performance and increase firm capacity and reliability to Cooperative
26 members in the Affected Areas;
- (ii) Is the least cost-viable solution;
- (iii) Will impact the fewest number of members;
- (iv) Has the least amount of visual constraints;
- (v) Is the most compatible with prudent technical and financial practices;

¹⁰⁸ Hr. Tr. at page 196, line 10 through page 197, page 4 (emphasis added.)

¹⁰⁹ Hr. Ex. A-5, Exhibit I (emphasis added.)

(vi) Has been confirmed by an independent third party feasibility study prepared by experts of the highest caliber; and

(vii) Reflects the wishes of the vast majority of Cooperative members residing within the Affected Areas, as well as Cooperative members as a whole.

Based upon the overwhelming weight of the evidence presented by SSVEC at the 252 Hearing (and as further corroborated by Staff), it is simply not in the public interest for the Commission to further delay the Cooperative from resuming the Project and constructing the proposed 69 kV line and substation.¹¹⁰ Moreover, the granting of the relief requested in the 252 Petition will further promote the public interest as it will result in the:

(i) Withdrawal of the Reconsideration Application and the Moratorium Application within ten (10) business days after the final order granting the requested relief becomes a final non-appealable order, thereby negating the need for further proceedings in these Dockets; and

(ii) Cooperative's ability to utilize the CREBS and ARRA money which it has secured for the benefit of the Affected Areas and all SSVEC members.

As it is critical that SSVEC be able to complete construction of the 69 kV line and substation prior to the winter of peak of 2011/2012, it must commence construction almost immediately. Therefore, SSVEC requests that the Commission issue its order granting the requested relief as expeditiously as possible, but no later than the end of May 2010.¹¹¹

¹¹⁰ If the Commission finds that SSVEC has complied with the Public Forum requirement of the Decision, the Decision does not need to be amended pursuant to A.R.S. § 40-252, and SSVEC requests that the *related authorization* to commence construction of the 69 kV line and resume the Project be ordered.

¹¹¹ Mr. Orozco testified that based on SSVEC's revised construction schedule, in order to have the substation on line by late Fall 2011, it must commence work on May 1, 2010. *See* Hr. Tr. at page 484, line 24 through page 484, line 3.